

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

LADON SMITH,

Petitioner,

: Case No. 1:17-cv-570

- vs -

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

WARDEN,
Chillicothe Correctional Institution

:

Respondent.

**DECISION AND ORDER DENYING MOTIONS FOR CERTIFICATE
OF APPEALABILITY AND FOR LEAVE TO APPEAL IN FORMA
PAUPERIS**

This habeas corpus case is before the Court on Petitioner's Notice of Appeal (ECF No. 19) and his associated Motions for Certificate of Appealability (ECF No. 21) and Leave to Appeal *in forma pauperis* (ECF No. 20).

The Notice of Appeal is from the Order Judge Barrett entered September 6, 2018, which Petitioner understands to be a "final order." However, the Order of September 6, 2018, is not a final appealable order. Judge Barrett has not yet entered a final order in the case. Presumably he will do so when he resolves Petitioner's Objections (ECF Nos. to the Report and Recommendations on the merits (ECF No. 13). As required by Habeas Rule 11, such a final order will itself contain a decision on a certificate of appealability and a recommendation to the Sixth Circuit on *in forma pauperis* status on appeal.

The September 6, 2018, Order which Petitioner is attempting to appeal was not a final order. Rather, it adopted the Report and Recommendations (ECF No. 17) on the Motion for Reconsideration (ECF No. 16) when Petitioner failed to file any objections to that Report.

Under 28 U.S.C. § 1291, a litigant may appeal to the circuit court only from final orders of a district court. Because the Order of September 6, 2018, is not a final order, it is not appealable. Therefore the instant Motions (ECF Nos. 20 and 21) are denied as moot.

October 10, 2018.

s/ *Michael R. Merz*
United States Magistrate Judge